

Remarks

This Response is filed in response to the Office Action dated June 8, 2010. Filed concurrently herewith is a Request for Continued Examination (RCE) and a Petition for an extension of time extending the period of response up to and including December 8, 2010.

Claims 1-7 and 9-11 were pending in the application, with claims 1, 2 and 3 being independent claims. In brief review, the Examiner rejected claims 1-7 and 9-11 as allegedly being directed to non-statutory subject matter under 35 U.S.C. § 101; rejected claims 1 and 3-11 as allegedly failing to comply with the written description requirement for reciting an "electronic database"; rejected claims 1 and 3-7 and 9-11 as allegedly obvious under 35 U.S.C. 103(a) over alleged "admitted prior art" (hereinafter "alleged admitted prior art") in view of a May 2003 article by Glen Szczyplka et al. entitled "The Adaptation and Use of Nielsen Media Research Commercial Ratings Data to Measure Potential Exposure to Televised Smoking-Related Advertisements" (hereinafter the "Szczyplka article"); and rejected claim 2 as allegedly obvious under 35 U.S.C. 103(a) over alleged "admitted prior art" in view of U.S. Patent No. 7,039,931 to Whymark (hereinafter "Whymark")

By this Response, these rejections are addressed. Reconsideration of the pending claims and application is respectfully requested.

Response to Section 101 Rejection

The Examiner rejected claims 1-7 and 9-11 as allegedly being directed to non-statutory subject matter under Section 101. Specifically, the Examiner argues at page 6 of the Office Action that claims 1-7 and 9-11 "are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform the underlying subject matter." The Examiner also argues at page 3 that the steps of "simply storing information are insignificant

extra solution activities", and that claim 1 defines a "manual process". The Examiner also argues at page 3 that use of an electronic database "is still a manual step in a series of other manual steps." The Examiner also states that "a database lookup" "may be a manual look up of a book containing data or a manual lookup of an electronic database."

Applicant respectfully traverses this rejection. The claims recite an electronic database and the processes of the present invention transform the data in the electronic database. And in this sense, the claims recite limitations that cannot be performed "manually" as argued by the Examiner.

It is believed the claims recite sufficient transformation to satisfy the In re Bilski test for patentable subject matter under 35 U.S.C. §101. In the Bilski decision, the Court stated that "a claimed process is patent-eligible if it transforms an article into a different state or thing" and further that transformation of "specific data" that represents physical, tangible objects can be patent-eligible subject matter. In re Bilski, 545 F.3d 943, 962-963 (Fed. Cir. 2008). The Court noted that the "raw materials of many information-age processes . . are electronic signals and electronically-manipulated data." Id. at 962.

It is not required that the underlying physical object that the data represents be transformed. Id. at 963. Moreover, it is respectfully submitted that the Court stated that it is "irrelevant that any individual step or limitation of such processes by itself would be unpatentable under § 101." Id. at 958.

For instance, claim 1 recites in part "determining a household universe for the data comprising the total number of households that subscribe to the network and storing the household universe in the electronic database." Claim 1 also recites "calculating household delivery for a specific spot by multiplying the network household delivery and the universe conformance factor and storing the household delivery data in the electronic database." Claim

1 also recites "calculating the spot's demo delivery by multiplying the network demo delivery by the universe conformance factor and storing the demo delivery number in the electronic database." Hence, for at least these reasons, claim 1 recites a process that transforms specific data using an electronic database into national equivalent units, and this data represents tangible objects in compliance with Section 101 and the Bilski decision.

Likewise, independent claim 2 also recites patentable subject matter. Claim 2 relates to the transformation of data representing local spots into "national equivalent units." Claim 2 recites "obtaining, in electronic format, a database comprising data correlated to the airing of the local spots." (emphasis added). Claim 2 recites in part "obtaining national viewing data for the network in increments of less than one hour corresponding to each time the local spot aired and uploading said data into said database." Claim 2 also recites "sorting the database by one or more of advertiser, length of spot, network, daypart, and ISCI Code." Claim 2 also recites "aggregating the audience values to create a national equivalent unit on the network." For at least these reasons, claim 2 recites a process that transforms specific data into national equivalent units, and this data represents tangible objects in compliance with Section 101 and the Bilski decision.

Independent claim 3 and dependent claims 4-7 and 9-11 relate to transforming data representing local commercial spot inventory into "national equivalent units." Claim 3 recites "determining an impression delivery for the local spots aired based on viewing data in increments of less than one hour from a national audience measurement and matching the impression delivery data with the information from the processed affidavits as a record in an electronic database." Claim 3 also recites "comparing an estimated delivery derived from data in the electronic database with the actual delivery to determine the value of the national equivalent unit." For at least these reasons, claims 3-7 and 9-11 recite a process that

transforms specific data into national equivalent units, and this data represents tangible objects in compliance with Section 101 and the Bilski decision.

In light of the legal standard, claims 1-7 and 9-11 are believed to comply with Section 101, and it is respectfully requested that this rejection be withdrawn.

Response to Section 112 Rejection

The Examiner rejected claims 1 and 3-11 as allegedly failing to comply with the written description requirement for reciting an "electronic database." At pages 8-9 of the Office Action, the Examiner argues that "applicant has not disclosed the storing/recording of such data in an electronic database. Furthermore, referring to applicant's Fig. 1, it appears that beyond the step of acquiring the affidavit, there are no interactions with any electronic database." (emphasis in original).

This rejection is respectfully traversed. According to the MPEP at Section 2163.02, "the subject matter of the claim need not be described literally (i.e., using the same terms or in *haec verba*) in order for the disclosure to satisfy the description requirement." Here, the original disclosure at paragraph [26], as one example, makes it clear that a "conversion into an electronically readable format" occurs and that data (such as date, day, time, zone, and network) is "uploaded into a database." Given this disclosure, it is respectfully submitted that a person of ordinary skill in the field would understand that this disclosure reasonably means an "electronic database" as recited in the claims.

Another example is found in paragraph [0029] of the original disclosure which states that "the viewing data from the CMIT are loaded into the same database that the affidavits were loaded into" – this reasonably conveys use of an electronic database. This paragraph goes on to state that "the network's national demo delivery for the date and quarter-hour is stored with

the record for the spot in the database." This is another example that is believed to reasonably convey use of an electronic database.

Accordingly, in light of at least these disclosures in the application as originally filed, it is respectfully submitted that the term "electronic database" is reasonably conveyed, and that claims 1 and 3-11 satisfy the written description requirement.

Response to Section 103 Rejection

The Examiner rejected claims 1 and 3-7 and 9-11 as allegedly obvious under 35 U.S.C. 103(a) over alleged "admitted prior art" (hereinafter "alleged admitted prior art") in view of a May 2003 article by Glen Szczypka et al. entitled "The Adaptation and Use of Nielsen Media Research Commercial Ratings Data to Measure Potential Exposure to Televised Smoking-Related Advertisements" (hereinafter the "Szczypka article"). This rejection is respectfully traversed.

First, the Szczypka article is not understood to disclose the formation of "national equivalent units" as recited in the claims. While the Szczypka article has a number of different calculations, none are understood to be "national equivalent units" or local commercial advertising spots as recited in independent claims 1 and 3. The national equivalent units are created using various embodiments of multi-step processes as recited in claims 1 and 3 that are not completely shown in the alleged prior art or the Szczypka article. For at least this reason, claims 1 and 3 are believed to be allowable.

Claim 1 also recites in part "retrieving a specific household universe for at least that part of the network corresponding to the location in which a spot was broadcast from the database and storing the specific household universe in a record corresponding to a specific local spot in the database for later retrieval." The Examiner contends that element is disclosed in paragraph

[11]. This is respectfully traversed, because not all zones insert in all networks. For at least this reason, claim 1 is believed to be allowable.

Moreover, as to the alleged admitted prior art, the Applicant respectfully re-iterates its traversal of the Examiner's characterization of the statements made in paragraphs [0025] and [0028] of the "Detailed Description of the Invention" as "admitted prior art." While these paragraphs acknowledge the *availability* of electronic affidavits and Nielsen's CMIT database, it is respectfully pointed out that the manner in which embodiments of the invention use these electronic affidavits and CMIT databases – in combination with the other operations recited in the independent claims – is novel and unique.

Specifically, paragraph [0015] states that "[t]he invention's use of an electronic format to gather and process information regarding airing of spots and of national audience measurements allows for the aggregating of a greater number of local spots, which in turn increases the number of potential advertisers. Many network advertisers will not buy a national equivalent unit unless they can be assured with reasonable certainty that the spot will reach a certain percentage of U.S. cable households. The invention's method of aggregating provides the advertiser the assurance that its spots have, in the aggregate, in fact, reached this percentage." This makes it clear that the inventive process of claim 1, including the use of electronic affidavits, provides a benefit and is non-obvious when compared to the prior art.

While the Examiner argues at page 13 that Szczyplka can be used to modify the alleged prior art, it is respectfully submitted that Szczyplka does not provide the guidance needed make modifications to the alleged prior art in a manner that will result in the process recited in claim 1. For at least this reason, claim 1 is believed to be allowable.

Claims 3-7 and 9-11 are also believed to be allowable. Regarding independent claim 3, this claim recites in part "determining an impression delivery for the local spots aired based on

viewing data in increments of less than one hour from a national audience measurement and matching the impression delivery data with the information from the processed affidavits as a record in a database." The Examiner states that Nielsen's CMIT database contains data on a quarter hour basis. As discussed in paragraphs [0011]-[0012] of the Application, the prior art has used "daypart" averages which are a broadly defined period of time such as "prime-time" – and not national viewing data "in increments of less than one hour" as recited in claim 3. Moreover, the entire element of this claim is not believed to be present in as part of Nielsen's CMIT cited by the Examiner. For at least this reason, claim 3 is believed to be allowable.

Further, as argued above, claim 3 recites "national equivalent units" and the Szczyplka article is not understood to disclose the formation of "national equivalent units" as recited in the claim 3. The national equivalent units recited in claim 3 are created using various embodiments of multi-step processes that are not completely shown in the alleged prior art or the Szczyplka article.

For at least these reasons, claim 3 is believed to be allowable along with dependent claims 4-7 and 9-11 which depend from independent claim 3.

The Examiner also rejected claim 2 as allegedly obvious under 35 U.S.C. 103(a) over the alleged admitted prior art in view of U.S. Patent No. 7,039,931 to Whymark (hereinafter "Whymark"). This rejection is also respectfully traversed.

Regarding independent claim 2, this claim also recites "national equivalent units" and Whymark is not understood to disclose the formation of "national equivalent units" as recited in the claim 2. The Examiner had previously agreed that this patent does not relate to forming "national equivalent unit." Whymark instead relates to electronically detecting whether an advertisement actually ran in a scheduled time slot cannot reasonably be used to render

unpatentable all inventions related to advertisement spots. For at least this reason, claim 2 is believed to be allowable.

Furthermore, claim 2 recites in part "determining household impression and demo impression for the local spots based on the national viewing data" and as pointed out in paragraphs [0011]-[0012] of the Application, the prior art has used "daypart" averages which are a broadly defined period of time such as "prime-time" – and not national viewing data "in increments of less than one hour" as recited in claim 2. For at least these reasons, claim 2 is believed to be allowable.

Conclusion

The application and claims are believed to be in condition for allowance. No additional fees are due beyond the Request for Continued Examination and extension fee submitted herewith. Should the Examiner have any questions, please contact the undersigned attorney at 303-223-1195.

Respectfully submitted,

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